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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

No. 776

HARRY Y. VICTOR and ELLA S. VICTOR, his wife, EDWARD V. TRAINOR, JOHN C. KRUEGER, EMILIE B. KRUEGER and JOSEPH RECUPIDO,

Petitioners,

VS.

HERBERT HILLEBRECHT, JAMES V. BREMNER and WALTER A. WADE, as Trust Managers, and HERBERT HILLEBRECHT, individually, and the TRUST COMPANY OF CHICAGO, not individually but as Liquidation Trustee under Trust No. 995,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Illinois.

PETITIONERS' REPLY.

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On Petition for Writ of Certiorari to the Supreme Court of Illinois.

PETITIONERS' REPLY.

The respondents, who oppose the granting of the writ (p. 2) on the ground that no Federal question exists as the 77-B reorganization was "completed" and the bankruptcy proceedings were "concluded" were of a *different* opinion when they filed their Petition in the Appellate Court for leave to appeal on the ground of importance. There, they urged that the Appellate Court "invaded the exclusive jurisdiction" of the Federal court. They quoted

§ 4 of Article XIV of the terms of the Trust Agreement (Tr. 45) which vested jurisdiction in the bankruptcy court to remove the Trust Managers, the Liquidation Trustee and to appoint their successors during the life of the Trust. They also quoted from the Trust Agreement (Tr. 15) the definition of the term "court" meaning "the court in the reorganization proceeding" and also quoted from paragraph 9 of the final decree in the reorganization proceedings (Tr. 120-121) where jurisdiction was reserved by that court for certain purposes during the *life* of the Liquidation Trust.

Respondents were also of a different opinion when they filed their Petition in the Supreme Court of Illinois for leave to appeal. They reiterated there their contention that under the terms of the Liquidation Trust Agreement, the Federal court had the "exclusive jurisdiction" and that "the Appellate Court ignored the reservation of jurisdiction". They urged in their argument under Point III that "the Appellate Court improperly invaded the exclusive jurisdiction of the District Court". Now, they have *about faced,* and say that the reorganization was "completed" and "concluded".

The contention (p. 3) that no Federal question was ever raised was fully discussed in the Petition (pp. 17-18). Petitioners have also shown that where a *Federal right* is involved the Federal right is not required to be pleaded, in any specific or particular form. The point (p. 9) that where the judgment for the State court rests on two grounds, one involving a Federal question and the other not, this court will not assume jurisdiction, is inapplicable where the *Federal right is involved and is denied,* as shown in the Petition (p. 20).

The Supreme Court of Illinois construed the powers and duties of the Trust Managers and the Liquidation Trustee under the Liquidation Trust which was created by the Federal court under § 77-B of the Bankruptcy Act (Tr. 129-130). It applied State law *contrary* to the Federal law. This was expressly pointed out in the Petition for rehearing (Tr. 151).

There is no merit to the contention that the rights and duties of the Trust Managers, the Liquidation Trustee and the beneficiaries, are not rights based on Federal law. The Liquidation Trust which was created by the Federal court is completely different from the creation of a corporation under State law to acquire assets of a bankrupt under a reorganization plan. In the latter case, the corporation is a State entity and the Federal court does not retain jurisdiction to control the powers and duties of directors and the officers who are elected. Here, a Liquidation Trust Agreement *emerged* from the Federal court *not* under State law, but under the powers vested in that court under § 77-B, whereby the *minority* creditors had to *accede* to the approval of the plan by the required majority and the court. Where a corporation takes over the assets of a bankrupt, its purpose is a *continuation of the business*. The Liquidation Trust was created *not to continue* the business, but to *liquidate the business*. Its life was to terminate in 15 years and throughout the 15 years, the Bankruptcy Court *retained jurisdiction* for certain purposes, including the power to remove the Trust Managers, to appoint their successors and also to instruct them as to their powers and duties. It is evident that this Liquidation Trust was controlled by Federal law and not by State law.

We will not burden this court with a discussion of the merits, as a mere reading of the opinion of the Appellate Court (339 Ill. App. 254, 90 N. E. (2) 270) as compared with the opinion of the Supreme Court which appears in the record (Tr. 124) and which was unnecessarily reprinted as an appendix to respondents' answer, is sufficient to show the merit for the allowance of the writ.

We, therefore, respectfully submit that the writ should be granted.

Respectfully submitted,

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